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09/933,229	08/20/2001	Kenneth N. Harel	CONTC.57582	6394
27629	7590	07/29/2005	EXAMINER	
FULWIDER PATTON LEE & UTECHT, LLP 200 OCEANGATE, SUITE 1550 LONG BEACH, CA 90802			A, PHI DIEU TRAN	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/933,229

Applicant(s)

HAREL, KENNETH N.

Examiner

Phi D. A

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15,16,30,35,36,41-48 and 52-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15,16,30,35,36,41-48 and 52-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3637

1. PRODUCT BY PROCESS CLAIM:

“ The subject matter present is regarded as a product by process claim in which a product is introduced by the method in which it is made. It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

The office policy applies to the limitations of “mixed together at the time of manufacture” in claim 35, “to cooperate in, during application...to....perforations” in claim 54.

*Claim Rejections – 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kunz et al (6295776) in view of Compton (2853871) and Weldy (re34547).

Kunz et al (figure 1) shows a protective drywall joint/trim device having a relatively rigid elongated core (12) having a curved transverse cross section(14) so as to have a convex outer surface and a concave inner surface, a pair of flanges (16) terminating in respective longitudinal edges, a paper cover (20) bonded to the outer surface of the core and extending beyond the longitudinal edges of the core to form flexible flaps ( the edge of the cover which extends beyond the core) having respective outward and inward surfaces, the flaps being formed with spaced apart perforations on the outward surfaces.

Kunz et al does not show the flap having elongated grooves and ridges with at least the inward surfaces including the ridges for anchoring the joint compound on the drywall corner

Art Unit: 3637

joint, at least the outward surfaces including the grooves, the perforations being in the grooves of the outward surfaces.

Compton shows flaps (20) having elongated grooves and ridges with at least the inward surfaces including the ridges for anchoring the joint compound(21), at least the outward surfaces including the grooves.

Weldy shows perforations being in the grooves of the outward surfaces of the flaps to enable strong engagement of plaster material to attach the cover to a wall.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Kunz et al to show the flap having elongated grooves and ridges with at least the inward surfaces including the ridges for anchoring the joint compound on the drywall corner joint, at least the outward surfaces including the grooves as taught by Compton, the perforations being in the grooves of the outward surfaces as taught by Weldy because having corrugated surface with grooves and ridges with perforations at the grooves of the outward surfaces would enhance the attachment of the joining compound to the cover and its supporting wall, and thus resulting in a stronger finish wall surface.

3. Claims 16, 41-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kunz et al (6295776) in view of Compton (2853871) and Weldy (re34547).

Kunz et al (figure 1) shows a drywall corner protection strip device having an elongated metal core (12) having first and second longitudinal edges, a paper cover (20) bonded to the metal core and extending beyond the first and second longitudinal edges to form flexible paper flaps, each having an outwardly facing surface and an inwardly facing surface, the flaps ( the edge of the cover which extends beyond the core) being formed on their outwardly facing

Art Unit: 3637

surfaces with spaced apart perforations and extending through the flaps to their inwardly facing surfaces to provide for the communication of uncured joint compound between the outwardly facing surfaces and the inwardly facing surfaces during the installation of the drywall corner protection strip device onto the drywall corner joint.

Kunz et al does not show the flap being formed on both their outwardly facing and inwardly facing surfaces with alternating elongated grooves and ridges, the perforations being formed along the grooves of the outside surface of the flaps.

Compton shows flaps (20) having elongated grooves and ridges on both the inside and outside surfaces for anchoring a joint compound(21).

Weldy shows perforations being in the grooves of the outside surfaces of the flaps to enable strong engagement of plaster material to attach the cover to a wall.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Kunz et al to show the flap being formed on both their outwardly facing and inwardly facing surfaces with alternating elongated grooves and ridges as taught by Compton, the perforations being formed along the grooves of the outside surfaces of the flaps as taught by Weldy because having corrugated surfaces with grooves and ridges with perforations at the grooves of the outward surfaces would enhance the attachment of the joining compound to the cover and its supporting wall, and thus resulting in a stronger finish wall surface.

Per claims 42-45, Kunz et al as modified shows the ridges being of uniform height, spaced equidistant apart, the ridges being continuous in the longitudinal direction of the flap, the flap being formed with the ridges extending the full length thereof.

Art Unit: 3637

4. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kunz et al (6295776) in view of Compton (2853871) and Weldy (re34547).

Kunz et al (figure 1) shows a protective drywall joint strip device having an elongated rigid core (12) of a predetermined width and terminating in opposite longitudinal edges, a paper cover (20) bonded to the core and configured to project laterally beyond the respective edges to form the respective flexible flaps having an outwardly facing surface and inwardly facing surface, the flaps being formed with respective perforations spaced equidistant, and extending through the flaps to form open flow apertures for flow therethrough of joint compound, the perforations being at least  $1/64^{\text{th}}$  of an inch in transverse cross section.

Kunz et al does not show the flap being formed on at least four parallel elongated grooves defining reinforcing ribs, the grooves being spaced  $1/8^{\text{th}}$  of an inch apart and the ribs being raised outwardly from the bottom of the grooves at least  $1/64^{\text{th}}$  of an inch, the perforations being spaced equidistant along the ribs.

Compton shows flaps (20) having at least four elongated parallel grooves and ridges (figures 1) on both the inside and outside surfaces for anchoring a joint compound (21), the ridges forming ribs.

Weldy shows perforations spaced equidistant along the ribs to enable strong engagement of plaster material to attach the cover to a wall.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Kunz et al to show the flap being formed on at least four parallel elongated grooves defining reinforcing ribs as taught by Compton, the grooves being spaced  $1/8^{\text{th}}$  of an inch apart and the ribs being raised outwardly from the bottom of the grooves at least  $1/64^{\text{th}}$  of an

Art Unit: 3637

inch, the perforations being spaced equidistant along the ribs as taught by Weldy because having corrugated surfaces with at least four parallel grooves and ridges with perforations spaced at equidistant from the ribs would enhance the attachment of the joining compound to the cover and its supporting wall, and thus resulting in a stronger finish wall surface, and it would have been an obvious matter of engineering design choice to show the grooves being spaced  $1/8^{\text{th}}$  of an inch apart and the ribs being raised outwardly from the bottom of the grooves at least  $1/64^{\text{th}}$  of an inch since such a modification would have involved a mere change in the size of a component; a change in size is generally recognized as being within the level of ordinary skill in the art, In re Rose, 105 USPQ 237 (CCPA 1955).

5. Claims 16, 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchie et al (5131198) in view of Compton (2853871) and Weldy (re34547).

Ritchie et al (figure 5) shows a drywall corner protection strip device having an elongated metal core (10') having first and second longitudinal edges, a paper cover (12') bonded to the metal core and extending beyond the first and second longitudinal edges to form flexible paper flaps, each having an outwardly facing surface and an inwardly facing surface, the paper cover being constructed of fibers and strengthening compound mixed together, the strengthening compound encapsulates the fibers (col 3 lines 10-12, lines 44-48).

Ritchie et al does not show the flaps being formed on their outwardly facing surfaces with spaced apart perforations and extending through the flaps to their inwardly facing surfaces to provide for the communication of uncured joint compound between the outwardly facing surfaces and the inwardly facing surfaces during the installation of the drywall corner protection strip device onto the drywall corner joint, the flap being formed on both their outwardly facing

Art Unit: 3637

and inwardly facing surfaces with alternating elongated grooves and ridges, the perforations being formed along the grooves of the outside surface of the flaps.

Compton shows flaps (20) having elongated grooves and ridges on both the inside and outside surfaces for anchoring a joint compound(21).

Weldy shows perforations being in the grooves of the outside surfaces of the flaps, the perforations being spaced apart and extending through the flaps to their inwardly facing surfaces to provide communication of uncured joint compound between the outwardly facing surfaces and the inwardly facing surfaces during the installation of the drywall corner protection strip device onto the drywall corner joint to enable strong engagement of plaster material to attach the cover to a wall.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Kunz et al to show the flaps being formed on their outwardly facing surfaces with spaced apart perforations and extending through the flaps to their inwardly facing surfaces to provide for the communication of uncured joint compound between the outwardly facing surfaces and the inwardly facing surfaces during the installation of the drywall corner protection strip device onto the drywall corner joint, the perforations being formed along the grooves of the outside surface of the flaps as taught by Weldy, the flaps being formed on both their outwardly facing and inwardly facing surfaces with alternating elongated grooves and ridges as taught by Compton because having corrugated surfaces with grooves and ridges with perforations at the grooves of the outward surfaces would enhance the attachment of the joining compound to the cover and its supporting wall, and thus resulting in a stronger finish wall surface.



6. Claims 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchie et al (5131198) in view of Compton (2853871) and Weldy (re34547).

Ritchie et al as modified shows all the claimed structural limitations. The claimed method steps of making a drywall joint protection strip device would have been the obvious method steps of making Ritchie et al's modified protection strip device.

7. Claims 52, 53, 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kunz et al (6295776) in view of Compton (2853871).

Kunz et al (figure 1) shows a drywall corner protection strip device having a relatively rigid core, a relatively flexible cover strip (20) for overlying the core and bonded to the core, the cover projecting beyond the opposite sides of the core to form respective flexible flaps formed with inner and outer sides, the flaps are further formed with a plurality of perforations disposed along the length thereof and filled with the joint compound.

Kunz et al does not show the inner sides of the flaps being formed with a plurality of alternating longitudinal flap grooves and ridges to be embedded in joint compound interposed between the inner sides and a respective corresponding portion of the exterior surfaces of the panels to fill the grooves and anchor the flaps in the compound.

Compton shows flaps (20) having elongated grooves and ridges on both the inside and outside surfaces to be embedded in joint compound (21).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Kunz et al to show the inner sides of the flaps being formed with a plurality of alternating longitudinal flap grooves and ridges to be embedded in joint compound interposed between the inner sides and a respective corresponding portion of the exterior surfaces of the

Art Unit: 3637

panels to fill the grooves and anchor the flaps in the compound as taught by Compton because having corrugated surfaces with grooves and ridges would enhance the attachment of the joining compound to the cover and its supporting wall, and thus resulting in a stronger finish wall surface.

Per claim 55, Kunz et al as modified further shows the ridges and grooves being continuous throughout the length of the flaps.

8. Claim 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kunz et al (6295776) in view of Compton (2853871) as applied to claim 53 above and further in view of Weldy (re34547).

Kunz et al as modified shows all the claimed limitations except for the perforations disposed in longitudinal rows and formed on their respective outer sides with the grooves aligned with the respective rows of perforations.

Weldy shows perforations disposed in longitudinal rows and formed on their respective outer sides with the grooves aligned with the respective rows of perforations to enhance the anchoring of the cover to the joint compound.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Kunz et al's modified structures to show the perforations disposed in longitudinal rows and formed on their respective outer sides with the grooves aligned with the respective rows of perforations as taught by Weldy because it would enhance the anchoring of the cover to the joint compound.

***Response to Arguments***

Art Unit: 3637

9. Applicant's arguments filed 5/4/05 have been fully considered but they are not persuasive.

With respect to applicant's arguments that Compton does not show flaps having elongated grooves and ridges as the flaps are actually of mesh or foraminious material, examiner respectfully disagrees. Compton (figures 1, 2, 3, 8, 11) shows flaps having elongated grooves and ridges. The flaps are not only made of mesh material as stated by applicant. As disclosed on page 2 lines 21-24, the flaps made be of "strip slitted and stretch as expanded metal or may have numerous punched therethrough...". Thus, as the flaps are made of expanded metal with holes punched therethrough, the showing in figures 1, 2, 3, 8, 11 are of flaps with elongated grooves and ridges. The grooves and ridges help anchor the flaps onto a substructure when a cover layer 21 is applied. Compton also discloses the flaps being covered with plaster or cement for sealing the corners where walls meet (col 3 lines 5-16). A person working in the art would recognize that Compton's teaching to sealing joints is related to applicant's invention, and analogous.

With respect to applicant's argument that modifying Kunz with Compton's teaching would defeat Kunz's objective, examiner respectfully disagrees. Compton's teaching would enhance Kunz's teaching as the combination would enable Kunz' flaps to better anchor the joint compound to the cover and its supporting wall, and thus results in a stronger finish wall surface. The modification is thus motivated. the argument is thus moot.

With respect to applicant's statement that there is no teaching to what size, configuration, or dimensions, the grooves and ridges should take, examiner respectfully points out that Compton's grooves and ridges of the flaps are part of a structure to enable the application of

Art Unit: 3637

joint compound. As such, the configuration, dimensions, size of the ridges and grooves are disclosed. The argument is thus moot.

With respect to claim 15 and applicant's statements, examiner respectfully points out that the limitations are met by the combination of the teachings of Kunz, Compton, and Weldy. As stated above, Compton teaches elongated grooves and ridges on the inner and outer surfaces to enable better anchoring of the flaps in a compound. The flaps are also used with plaster and cements at corner joints. The arguments are thus moot.

With respect to claim 16, the arguments to the Compton reference is stated above and thus not repeated. Furthermore, a prima facie obviousness has been set forth above with the references. The argument is thus moot.

With respect to applicant's arguments that there is no motivation to incorporate ridges and grooves in Kunz's reference as the paper would flatten anyhow, examiner respectfully disagrees. Corrugated paper would enable the compound to seep into an interior area between the flaps and the wall, and thus enable the secure anchoring of the flaps. The argument is thus moot.

With respect to Weldy, examiner respectfully states that the reference teaches the use of grooves on a surface to enable strong engagement of plaster material. Modifying Kunz with such a teaching would enable strong engagement of plaster material to the flaps and the walls. With respect to size and configuration of the striation, examiner points out the grooves are used for attaching plaster as disclosed by Kunz and Compton. The size and configuration are thus applicable to Kunz's teaching. The argument is thus moot.

With respect to Ritchie, the reference as modified by Compton and Weldy shows grooves and ridges on the surfaces. The motivation for combining the reference Ritchie with Compton and Weldy is similar to that of combining Kunz with Compton and Weldy. As the motivations are stated above, they are not repeated again. In all, the combination of the references enable Ritchie's enhanced teaching to have plaster more securely attaching to the flaps and the flaps more securely attaching to the wall surface. The argument is thus moot.

10. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

With respect to the method steps of claims 47-48, the reference Ritchie as modified shows all the claimed structural limitations. The claimed method steps would have been the obvious method steps of making Ritchie et al's modified protection strip device.

With respect to claims 52, 53, 55, Kunz et al as modified shows all the claimed limitations. The modification is encouraged and motivated as stated above. The argument is thus moot.

Applicant's argument that the references do not show grooves configured to funnel compound into the perforations, examiner respectfully disagrees. The references as modified

Art Unit: 3637

shows all the claimed structural limitations including plaster/compound attached to the flaps.

The reference thus shows grooves inherently able to funnel compound into the perforations.

With respect to applicant's argument that Compton is not in Applicant's area of endeavor, examiner respectfully disagrees. as pointed out above, the reference teaches sealing corners with flaps, cover, and plaster compound. The reference is related to applicant's area of endeavor. The argument is thus moot.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Tuesday, Thursday and Friday.

Art Unit: 3637

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Phi Dieu Tran A', with a large, stylized loop at the end.

Phi Dieu Tran A

7/25/05